

FOURTH APPELLATE DISTRICT
DIVISION ONE
October 12, 2004

D043875 People v. De La Torre

The judgment is affirmed. McIntyre, J.; We Concur: Benke, Acting P.J., Aaron, J.

D043141 People v. Ledezma

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D041736 People v. Williams

The judgment is affirmed. Huffman, Acting P.J.; I Concur: O'Rourke, J., I Concur and Dissent (by opinion): McDonald, J.

D042499 In re Aaron M., a Juvenile

The judgment is affirmed. McConnell, P.J.; We Concur: Nares, J., O'Rourke, J.

D044129 In re Alexander L., a Juvenile

The judgment is affirmed. Nares, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D042408 People v Sustaita

D043767 In re Sustaita on Habeas Corpus

(Consolidated case) The petition for rehearing is denied.

D043261 In re Merrick V., et al. Juveniles

The petition for rehearing is denied.

D042771 Klein v. Longs Drug Stores Corp. et al.

A Notice of Dismissal has been filed this date by appellant. This Court's September 3, 2004, order placing the above-entitled case on calendar for Wednesday, October 13, 2004, is vacated. Upon written request filed by appellant as noted above, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal.Rules of Court, rule 20(c)(2)).

D045038 Jason B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Jason B. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed. The case is dismissed.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion

Clerk: D. E. Moore

D041561 Lucas v. State of California et al.

Cause called on merits. Paul D. Jackson, Esq. argued for appellant. David M. Tiede, Deputy Attorney General argued for respondent. Mr. Jackson replied. Cause submitted.

Court recessed at 9:15 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

FOURTH APPELLATE DISTRICT
DIVISION ONE
October 12, 2004 (Continued)

D044163 In re Justice P., et al., Juveniles

Cause called on merits. Tom Owen, Esq. argued for appellant. Christopher Blake, Esq. argued for the minor. Christa Baxter, Esq. Deputy County Counsel argued for respondent. Mr. Owen replied. Cause submitted.

D041499 Robles v. Autozone, Inc.

Cause called on merits. Charles Moore, Esq. argued for appellant/cross-respondent. Jeremy Alan Roth, Esq. argued for respondent/cross-appellant. Mr. Moore replied. Mr. Roth replied. Cause submitted.

D043013 Gorges et al. v. Somo

Cause called on merits. Jose Carlos Rojo, Esq. argued for appellant. J. Parkeson Miller, Esq. argued for respondent. Mr. Rojo replied. Cause submitted.

Court recessed at 10:26 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron

D041368 Bates v. Keirse

Cause called on merits. Roland Eugene Bye, Esq. argued for appellant/cross-respondent. Don Carl Lippenberger, Esq. argued for respondent/cross-appellant. Mr. Bye replied. Mr. Lippenberger replied. Cause submitted.

Court recessed at 11:19 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Terry O'Rourke, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. E. Moore

D043412 Villegas v. De Los Angeles Myers

Cause called on merits. Steven Haskett, Esq. argued for appellant. Luis Michael Bustillos, Esq. argued for respondent. Mr. Haskett replied. Cause submitted.

D042752 People v. Miller

Cause called on merits. Marianne Harguindeguy, Esq. argued for appellant. Lisa Jacobson, Deputy Attorney General argued for respondent. Cause submitted.

D041726 People v. Ivan Vasquez et al.

Cause called on merits. Joseph T. Tavano, Esq. argued for appellant, Ivan Vasquez. Peter Clarke, Esq. argued for appellant, Alberto Renteria. Elizabeth Hartwig, Deputy Attorney General argued for respondent. Mr. Tavano replied. Mr. Clarke replied. Cause submitted.

D042328 Mussey Grade Park, LLC et al. v. Pine et al.

D043126 Mussey Grade Park, LLC et al. v. Pine et al.

Cause called on merits. Jeffrey N. Garland, Esq. argued for appellant. Alexander Downie Thomson, Esq. argued for respondent. Mr. Garland replied. Cause submitted.

FOURTH APPELLATE DISTRICT
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October 12, 2004 (Continued)

Court recessed at 2:35 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D040824 People v. Fuson

Cause called on merits. Steve Schorr, Esq. argued for appellant. Randall Einhorn, Deputy Attorney General argued for respondent. Mr. Schorr replied. Cause submitted.

D042623 People v. Fernando Vasquez

Cause called on merits. Amanda Benedict, Esq. argued for appellant. Jeff Koch, Deputy Attorney General argued for respondent. Ms. Bendict replied. Cause submitted.

Court recessed at 3:30 p.m. until Wednesday, October 13, 2004 at 9 a.m.

FOURTH APPELLATE DISTRICT
DIVISION ONE
October 13, 2004 (Continued)

D044312 In re Vanessa V., a Juvenile

Judgment affirmed. Benke, Acting P.J.; We Concur: Nares, J., Irion, J.

D043893 People v. Naffa

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Huffman, J.

D044197 In re Austin G., a Juvenile

The orders are affirmed. Huffman, Acting P.J.; We Concur: Haller, J., Irion, J.

D044551 Kendall v. Heidenthal

Upon written request filed by appellant, the appeal is dismissed.

D044674 In re Carl R., a Juvenile

Upon written request filed by counsel for Voices for Children, Inc., the appeal filed September 1, 2004, by CASA worker Meredythe Glass of Voices for Children is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

D045197 In re Laura B., for Declaration of Emancipation of Minor

The September 2, 2004 order granting the minor's request for emancipation is not appealable. Review is by way of petition for writ of mandate. (Family Code Section 7123, subdivision (b)). The appeal is dismissed.

D042140 Kitlas v. Harry et al.

Appellant's petition for rehearing is denied. Justices Nares and McIntyre concur in the denial; Justice Benke would grant.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D. E. Moore

D042713 Marcus v. Regents of the University of California

Cause called on merits. John L. Staley, Esq. argued for appellant. Richard Paul, Esq. argued for respondent. Mr. Staley replied. Cause submitted.

Court recessed at 9:24 a.m. to change panels. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

D043653 People v. Daniel

Cause called on merits. John L. Staley, Esq. argued for appellant. Simona Constaninescu, Certified Law Student argued for respondent. Cause submitted.

D042327 Valladolid v. San Diego County Board of Supervisors et al.

Cause called on merits. Patricia Meyer, Esq. argued for appellant. Diane Bardsley, Deputy Counsel Counsel argued for respondent. William Pettingill, Esq. was present in oral argument on respondent's behalf, but did not argue. Michael J. Aguirre, Esq. replied for appellant. Cause submitted.

Court recessed at 10:34 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Terry O'Rourke
Clerk: D. E. Moore

D044446 Black Historical Society of San Diego v. City of San Diego et al.

Cause called on merits. Kenneth N. Hamilton, Esq. argued for appellant. Debbie M. Smith, Deputy City Attorney argued for respondent. Mr. Hamilton replied. Cause submitted.

Court recessed at 1:43 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith Haller
Clerk: D. E. Moore

D043114 People v. Martinez

Cause called on merits. Betty Haight, Esq. argued for appellant. Marvin Mizell, Deputy Attorney General argued for respondent. Cause submitted.

D043159 People v. Rucker

Cause called on merits. Randall Bookout, Esq. argued for appellant. Warren Robinson, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 2:34 p.m. to change panel members. New panel members: The Honorable Judith McConnell Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D042110 People v. Carapia

Cause called on merits. Robert E. Boyce, Esq. argued for appellant. Elizabeth Voorhies, Deputy Attorney General argued for respondent. Mr. Boyce replied. Cause submitted.

D043743 United Services Automobile Association v. Herwig

Cause called on merits. Laura K. Kail, Esq. argued for appellant. D. Amy Akiyama, Esq. argued for respondent. Ms. Kail replied. Cause submitted.

Court recessed at 3:15 p.m. until Thursday, October 14, 2004 at 9 a.m.

FOURTH APPELLATE DISTRICT
DIVISION ONE
October 14, 2004

D043619 People v. Smith

The judgment is affirmed. Irion, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D044035 People v. Lovejoy

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., McDonald, J.

D044656 In re Andrew B., a Juvenile

The appeal is dismissed. Nares, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D043315 People v. Lawrence

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., McIntyre, J.

D043872 In re Jesus Z.

The Agency's motion to augment the record on appeal with additional evidence is denied. The judgment terminating parental rights and selecting adoption as the permanent plan for Jesus and Ivan is affirmed. Huffman, J.; McConnell, P.J., Haller, J.

D041152 People v. Leon

The judgment is reversed as to the upper terms on counts 2, 3, and 4, but is otherwise affirmed. The matter is remanded for resentencing. Aaron, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D042411 In re Marriage of Wenzel

The order is affirmed. Nares, Acting P.J.; We Concur: McIntyre, J., Irion, J.

D045039 Danay D. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Danay D. has notified the court on behalf of the petitioner that a Petition for a Writ of Mandate under Rule 39.1B will not be filed. The case is dismissed.

D044902 Safire N. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

By failing to file a timely petition for writ relief, the notice of intent is deemed to be abandoned. The case is dismissed.

D044790 Suzette G. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The Court has read and considered Real Party in Interest's motion to dismiss father's petition for writ as abandoned, points and authorities in support of the motion, and request for extension of time to file response, and petitioner's opposition to motion to dismiss writ petition. The petition does not contain applicable points and authorities as required by California Rules of Court, rule 39.1B(j). The order to show cause is discharged as improvidently granted and the petition is DISMISSED.

D045139 Spaeth et al. v. Superior Court of San Diego County/Davis et al.

The petition is denied.

D045031 In re Calcagno on Habeas Corpus

The petition is denied without prejudice.

FOURTH APPELLATE DISTRICT
DIVISION ONE
October 14, 2004 (Continued)

D044097 People v. Gonzalez

The judgment is affirmed. Aaron, J.; We Concur: Benke, Acting P.J., Huffman, J.

D044287 People v. Funkhouser

The judgment is affirmed. Irion, J.; We Concur: Haller, Acting P.J., McIntyre, J.

D043137 People v. Motter

The judgment is reversed. McConnell, P.J.; We Concur: McDonald, J., McIntyre, J.

D044098 People v. Stally

The judgment is affirmed. McConnell, P.J.; We Concur: Haller, J., McIntyre, J.

Court convened at 9 a.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

Clerk: D. E. Moore

D041742 Misek-Falcoff v. Douglas

Cause called on merits. Cheryl Edwards Tannenberg, Esq. argued for respondent. Ms. Misek-Falcoff argued for appellant in pro per, telephonically. Cause submitted..

D043630 In re Courtney S., et al. Juveniles

D043897 In re Courtney S., et al. Juveniles

Cause called on merits. Craig E. Arthur, Esq. argued for appellant, Barbara M. Andrea St. Julian, Esq. argued for appellant, Courtney S. Linda Fabian, Esq. argued for appellant, Jamie S. Maryann Marisa Milcetic, Esq. argued for respondent, Paul D. Gary Seiser, Deputy County Counsel argued for respondent. Mr. Arthur replied. Ms. St. Julian replied. Ms. Fabian replied. Cause submitted.

Court recessed at 10:17 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion.

D042937 Chacon et al. v. City of San Diego et al.

Cause called on merits. Julie Steele Buechler, Esq. argued for appellant. Richard A. Ostrow, Esq. argued for respondent. Ms. Buechler replied. Cause submitted.

D042680 Solar Turbines, Inc. v. Department of Industrial Relations et al.

Cause called on merits. John Peter Zaimes, Esq. argued for appellant. Anne Hipshman, Esq. argued for respondent. Mr. Zaimes replied. Cause submitted.

Court recessed at 11:28 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron

FOURTH APPELLATE DISTRICT
DIVISION ONE
October 14, 2004 (Continued)

D044131 The California Department of Corrections v. Robin J. et al.

Cause called on merits. Michelle A. Des Jardins, Deputy Attorney General argued for appellant. Elizabeth Missakian, Esq. argued for respondent, Vaughn J. Denise Rudasill, Esq. argued for respondent, Lucas J. Christopher Blake, Esq. argued for respondent, Robin J. Ms. Des Jardins replied. Ms. Missakian replied. Cause submitted.

Court recessed at 12:30 p.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke
Clerk: D. E. Moore

D043405 Bossi v. Governing Board of the Southwestern Community College District

Cause called on merits. Michael P. Baranic, Esq. argued for appellant. Randall L. Winet, Esq. argued for respondent. Cause submitted.

D043378 Ballard v. De Rito

Cause called on merits. Jerry La Cues, Esq. argued for appellant. Jill Raffee, Esq. argued for respondent. Mr. La Cues replied. Cause submitted.

Court recessed at 1:56 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D043256 Zionsville Engineering, Inc. v. Seaside Helicopters, Inc.

Cause called on merits. Alan L. Williams, Esq. argued for appellant. Michael Newcomb, Esq. argued for respondent. Mr. Williams replied. Cause submitted.

Court recessed at 2:30 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

D043283 Masters v. Alameida et al.

Cause called on merits. John Paul Masters, argued for appellant in pro per. Robert F. Helfand, Deputy Attorney General argued for respondent. Cause to be submitted at a later date.

D043125 Independent Energy Producer's Association, Inc. v. Board of Equalization

Cause called on merits. Stephen Davis, Esq. argued for appellant. Felix E. Leatherwood, Deputy Attorney General argued for respondent. Mr. Davis replied. Cause submitted.

Court recessed at 3:18 p.m. until Friday, October 15, 2004 at 9 a.m.

FOURTH APPELLATE DISTRICT
DIVISION ONE
October 15, 2004

D043916 People v. Wilson

The judgment is affirmed. McIntyre, J.; We Concur: Nares, Acting P.J., McDonald, J.

D042458 People v. Koonce

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Nares, J.

**D045193 Sun Valley Flooring and Décor Shoppe et al. v. Superior Court of San Diego
County/Utzinger et al.**

The petition is denied.

D045187 Espudo v. Superior Court of San Diego County/People

The petition is denied.

D045079 In re Thompkins on Habeas Corpus

The petition is denied.

Court convened at 9 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Cynthia Aaron

Clerk: D. E. Moore

D042947 Graham v. Glen

Cause called on merits. Stephen Wayne Johnson, Esq. argued for appellant. Daniel J. Cronin, Esq.
argued for respondent. Mr. Johnson replied. Cause submitted.

D042401 Lytwyn v. Fry's Electronics, Inc., et al.

Cause called on merits. Scott A. McMillan, Esq. argued for appellant. Kenneth Pritikin, Esq. argued for
respondent. Mr. McMillan replied. Cause submitted.

D042761 Szaniawski v. Szaniawski

Cause called on merits. Virginia L. Szaniawski, argued for appellant in pro per. Glen Frederick Dorgan,
Esq. argued for respondent. Cause submitted.

Court recessed at 9:58 a.m. to change panel members. New panel members: The Honorable
Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron
and Joan Irion

D042624 Elizabeth v. Lyon

Cause called on merits. Carl M. Hancock, Esq. argued for appellant. John Knoll, Esq. argued for
respondent. Cause submitted.

Court recessed at 10:20 a.m. to change panel members. New panel members: The Honorable
Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald
and Cynthia Aaron

FOURTH APPELLATE DISTRICT
DIVISION ONE
October 15, 2004 (Continued)

D044514 Cheng v. Superior Court

Matter called on merits. J. Patrick Huston, Esq. argued for petitioner. Laura Risenberg, Esq. argued for respondent. Mr. Huston replied. Matter submitted.

Court recessed at 10:57 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

Clerk: D. E. Moore

D043230 USAT Reorganization LLC et al. v. Writer, Sr.

Cause called on merits. Robert Daniel Krintzman, argued for appellant. Janis L. Turner, Esq. argued for respondent. Mr. Krintzman replied. Cause submitted.

D043951 In re Eugenea W., a Juvenile

Cause called on merits. Linda Rehm, Esq. argued for appellant. Paula Roach, Deputy County Counsel argued for respondent. Ms. Rehm replied. Cause submitted.

D042351 Ryan v. Ronquillo et al.

Cause called on merits. David A. Kay, Esq. argued for appellant. Andrew Dunk, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

D042815 Thermoview Industries, Inc. v. Utility Consumers Action Network et al.

Cause called on merits. John W. Hanson, Esq. argued for appellant/cross-respondent. Bruce David Rudman, Esq. argued for respondent/cross-appellant. Mr. Hanson replied. Cause submitted.

Court recessed at 2:45 p.m. until Monday, October 18, 2004 at 10 a.m.

D043773 People v. Villalobos

Appellant's Motion to Recall Opinion to Permit Appellant to Personally File a Supplemental Brief in Accordance with the Procedures of People v. Wende (1970) 25 Cal.3d 436 is treated as a petition for rehearing. The petition for rehearing is granted. (Cal. Rules of Court, rule 25(a)(1)). The opinion filed on September 15, 2004, is vacated. (Rule 25(d)). Appellant may personally file a supplemental brief within 30 days of the date of this order.